

**EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING, RECYCLING AND DISPOSAL OF
MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS
IN THE CITY OF PFLUGERVILLE, TEXAS**

FEBRUARY 1, 2018

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IN THE CITY OF PFLUGERVILLE, TEXAS STATE OF TEXAS**

COUNTY OF TRAVIS

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of the ____ day of July, 2017, to be effective on February 1, 2018 (the "Effective Date") by and between Progressive Waste Solutions of TX, Inc. d/b/a WC of Texas (the "Service Provider"), and the City of Pflugerville, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and recycle or dispose of Municipal Solid Waste and Recyclable Materials (as such terms are defined herein) within the City's corporate limits, expanded areas, and extraterritorial jurisdiction.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the City hereby agree as follows:

SECTION 1. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Bag - Plastic sacks, secured at the top, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 40 lbs.

Bulky Item - Any item measuring in excess of either forty-eight (48) inches in length, four (4) inches in diameter, or two (2) cubic yards, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches and other similar household item.

Bundles - Items not measuring in excess of either forty-eight (48) inches in length or forty (40) pounds in weight and which are securely fastened together, including, but not limited to, brush, newspapers, Christmas trees and tree trimmings.

Business Day - Any day that is not a Saturday, a Sunday or other day on which City offices are closed.

Commercial Unit – Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials during, or as a result of, its businesses, including, but not limited to restaurants, stores and warehouses.

Construction and Demolition Waste – Solid Waste resulting from construction or

demolition activities or that is directly or indirectly the by-product of such activities. (Some of these items may include, but not be limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products.) Construction and Demolition Waste does not include Hazardous Waste, Municipal Solid Waste, Recyclable Materials or Bulky Items.

Container - Any receptacle, including, but not limited to, dumpsters, Roll-Offs and Carts, provided to the City by the Service Provider and utilized by a Residential Unit for collecting Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials. Containers are designed to hold between thirty (30) gallons and forty (40) cubic yards of Solid Waste.

Dumpster – a metal or plastic container that may or may not have wheels, having lids and may have side doors, in sizes from two (2) cubic yards up to ten (10) cubic yards.

Hazardous Waste - Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Thanksgiving Day
- (3) Christmas Day (December 25th).

Landfill - Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

Municipal Solid Waste - Solid Waste resulting from or incidental to municipal, community, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

Recyclable Materials -

- (a) Newspapers, magazines, and catalogs, and other paper items such as mail, paper bags, office paper, envelopes, cereal and soda drink boxes, corrugated cardboard, phone books or other paper;
- (b) Glass bottles and jars (excluding mirrors, windows, ceramics, light bulbs, dishes, cups, and other glass products);
- (c) Metal cans composed of tin, steel or aluminum, metal lids from glass jars, empty aerosol cans (excluding scrap metal); and

(d) Plastic containers including all varieties of the types designated as #1, #2, #3, #4, #5, #6 and #7.

Recycling Container - A Container with at least ninety-five (95) gallons of capacity and provided by the Service Provider for the collection of Recyclable Materials.

Residential Unit - Any residential dwelling that is designed for, and inhabited by, a single person or family unit and that generates and accumulates Municipal Solid Waste and Recyclable Materials. Residential units include duplexes, triplexes, fourplexes and any multi family structures that utilize carts (Carts) or bags for storage and collection of Municipal Solid Wastes and Recyclables.

Roll-Off - A Container with twenty (20) cubic yards to forty (40) cubic yards of capacity.

Rollout (Cart) - A Container wheeled and lidded with ninety-five (95) gallons of capacity.

Single-Stream Recycling - A recycling process in which all Recyclable Materials are commingled and collected in a container designated for recycling with no sorting required by the generator.

Solid Waste - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act § 361.003(34) whether such waste is mixed with or constitutes Recyclable Materials.

Special Needs Residential Unit - Any residential dwelling that is inhabited by persons, all of whom are physically unable to place Municipal Solid Waste or Recyclable Materials at the curbside, and that generates and accumulates Municipal Solid Waste and Recyclable Materials. The identities of the members of a Special Needs Residential Unit shall be certified by the City Manager and agreed to by the Service Provider.

White Good - Any item measuring more than either three (3) cubic feet in size, and that is manufactured primarily from metal, including, but not limited to, a bath tub, heater, hot water heater, refrigerator, sink or washer and dryer.

SECTION 2. EXCLUSIVE FRANCHISE GRANT FOR RESIDENTIAL UNITS

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling, recycling and disposal of Municipal Solid Waste and Recyclable Materials, the exclusive franchise, license and privilege to collect, haul and recycle or dispose of Municipal Solid Waste and Recyclable Materials over, upon, along and across the City's present and future streets, alleys, bridges and public properties for services provided to Residential Units. To maintain the exclusive franchise in favor of the Service Provider contained herein, the City shall take all appropriate legal action against any company, customer or third-party infringing upon the exclusive rights of the Service Provider. Appropriate legal action is determined in the sole discretion of the City Council, after advice

from legal counsel. If the City fails to pursue appropriate legal action to remedy an infringement on the Service Provider's exclusive franchise rights, the Service Provider may retain a subrogation right from the City to recover actual damages from any third-party who interferes with Service Provider's exclusive-franchise grant described herein. The Service Provider shall retain all remedies afforded to it by contract or law to seek enforcement by the city, including, but not limited to, specific performance, to the extent provided by law.

SECTION 3. OPERATIONS.

A. Scope of Operations. It is expressly understood and agreed that the Service Provider will collect, haul and recycle or dispose of all Municipal Solid Waste and Recyclable Materials (as provided herein) (i) generated and accumulated by Residential Units, and (ii) placed within Containers by those Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Residential Units), all within the City's corporate limits, including the City extra territorial jurisdiction ("ETJ") and/or expanded service areas or any territories annexed by the City during the term of this Agreement (the "Services").

B. Nature of Operations. The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and recycling or disposal of Municipal Solid Waste and Recyclable Materials, the title to all Municipal Solid Waste and Recyclable Materials collected, hauled and recycled or disposed of by the Service Provider over, upon, along and across the City's present and future streets, alleys, bridges and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 4. COLLECTIONS OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS.

A. The Service Provider will collect Municipal Solid Waste from Residential Units once every week and Recyclable Materials every other week provided that (1) such Municipal Solid Waste and Recyclable Material are placed in Containers provided by the Service Provider, and (2) such containers are placed within five (5) feet of the curbside or right of way adjacent to the Residential Unit no later than 7:00 A.M. on the scheduled collection day. The Service Provider shall not provide the Services before 7:00 A.M. or after 7:00 P.M. Carts for new Residential Units will be delivered within seven (7) Business Days from the date of notice to the Service Provider. Replacements for damaged or stolen Carts will be delivered within three (3) Business Days from the date of notice to the Service Provider. The City will notify the Service Provider of new replacement Roll-Off orders by 3:00 P.M. each Business Day. The Service Providers failure to deliver the appropriate Containers to a residential Unit will subject the Service Provider to a penalty of \$25.00 per occurrence.

B. Excess or Misplaced Municipal Solid Waste. Notwithstanding anything to the contrary contained in Section 7 herein, the Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Municipal Solid Waste and Recyclable Materials placed inside the Containers provided by the Service Provider plus up to six (6) extra bags, bundles

and bulky items; not to exceed two (2) cubic yards in aggregate. Municipal Solid Waste and Recyclable Materials more than the described limits will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste and Recyclable Materials may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider in its sole discretion. If the excess or misplaced Municipal Solid Waste and/or Recyclable Materials continue, the City shall require the Single-Family Residential Unit to utilize an additional Container so that the excess or misplaced Municipal Solid Waste and/or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.A. hereto.

C. Special Needs Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Special Needs Residential Units with house-side collection of their Containers; provided, that the Service Provider receives prior written notice from the Special Needs Residential Unit of such special need. The City shall be solely responsible for all other modifications and accommodations required by the Americans with Disabilities Act or any other applicable law or regulation regarding the services provided hereunder to Residential Units.

D. Collection Routes. The Service Provider shall establish routes for collection of Municipal Solid Waste and Recyclable Materials from Residential Units. The Service Provider will submit a map to the City designating the collection routes on an annual basis, or more frequently upon the request of the City. The map shall be of such size to clearly show all pertinent information. The Service Provider may, at any time during the term of this Agreement, request from the City changes to the collection routes. City's approval to changes in the collection routes shall not be unreasonably withheld. Upon the City's approval of such changes, the Service Provider will provide the City with the route changes to post on the City's web site.

E. Recycling Facility. The Service Provider will deliver the collected recyclables to a permitted recycling facility.

F. Damaged Roll Out Audit and Replacement. The Service Provider will make consistent good faith efforts to identify Carts that are damaged and replace them without notification from the City. Drivers, Supervisors and Route Auditors will be alert to the presence of damaged Carts and report such damage and the associated address to the Dispatch Office for replacement on the next regularly scheduled collection day for that area. Service Provider will notify the City on a monthly basis of any damaged Roll-Outs that have been replaced. If damage or loss of Carts frequently occurs at a particular address that resident may be required to pay a security deposit of \$75.00 to receive a replacement Roll-Out.

SECTION 5. PUBLIC EDUCATION PROGRAM.

A. The Service Provider will work with the City of Pflugerville's Public Information Officer to determine the best methods of providing Information regarding Municipal Solid Waste and recycling services to the Residential Units. The Service Provider agrees to pay up to \$3,100.00 by the end of each Contract Year

to the City to assist the City in providing this Information.

B. Ongoing Recycling Program & Additional Recycling Event. Service Provider will schedule, publicize and conduct an ongoing Single-Stream Recycling education program annually that has had the prior review and approval of the City Council and Staff. In addition, the Service Provider will present at least one (1) educational or marketing event to the City each year. The Service Provider will provide assistance in developing recycling programs to City sponsored events that require recycling assistance.

C. Marketing and Quarterly Reports. The Service Provider will retain responsibility for the marketing of all Recyclable Materials. The Service Provider will provide the City with a quarterly report containing participation, the type of Recyclable Materials collected, the volume of Recyclable Materials collected and the name of the processing facility where the Recyclable Materials were delivered.

SECTION 6. SPECIAL COLLECTIONS AND SERVICES.

A. Municipal Locations. The Service Provider will provide, at no cost to the City, a reasonably adequate number of Carts and Recycling Containers to collect Municipal Solid Waste at all current and future municipal locations within the City one to three times per week as needed.

B. Special Events. In addition, the Service Provider will provide, at no cost to the City, a reasonably adequate number of Containers to collect Municipal Solid Waste at certain special events in the City, including those events listed below; provided, that the City gives the Service Provider reasonable prior written notice of the date of such special event as well as the number of Containers that will be required.

- Deutschen Pfest
- Pflugerville Pfirecracker Pfestival
- City Wide Clean-up
- Chili Pfest

The Service Provider shall provide a reasonably adequate level of services to the City for up to five (5) additional special events during the term of this Agreement, at no cost to the City. More than the five (5) additional special events, the Service Provider will provide reasonably adequate additional services for such additional events that are not listed or mutually agreed upon by both parties at a rate quoted by the Service Provider at the time of the request.

SECTION 7. BULKY ITEMS, BAGS, AND BUNDLES.

A. Pre-Arranged Collections. In excess of the Containers, the Service Provider will collect up to an aggregate of six (6) Bulky Items, Bags, or Bundles from Residential Units once per week as part of the regular collections in Section 4, as designated by the Service Provider; provided, that the Bulky Items, Bags, or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the scheduled collection day, (B) are reasonably contained, and (C) do not exceed two (2) cubic yards

in total volume (3'x3'x6'). The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Bulky Items and Bundles from those Residential Units that have complied with the definitions in Section I and this Section 7.A. White Goods containing refrigerants will not be collected by the Service Provider unless such White Goods have been certified in writing by a professional technician to have had all such refrigerants removed.

B. Negotiated Collections. It is understood and agreed that the service provided under Section 7.A. does not include the collection of Bulky Items, Bags, and Bundles comprised of Construction and Demolition Waste, White Goods or any materials resulting from remodeling, general property clean-up or clearing of property for the preparation of construction. However, the Service Provider may negotiate an agreement on an individual basis with the owner or occupant of a Residential Unit regarding the collection of such items. Payment for such services will be between the service provider and the generator.

SECTION 8. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider regarding the Services, shall at all times remain the property of the Service Provider.

SECTION 9. RATES AND FEES.

Subject to adjustment, as provided herein, the rates and fees to be charged and received by the Service Provider for the first two years of the Agreement are:

Base Service (1X) Week Trash Collection of Municipal Solid Waste as described in Section 4B and Every Other Week Recycling Collection - \$15.18 per residence per month.

Extra Trash Cart (Each Per month) - \$6.12

Extra Recycling Cart (Each per Month - \$2.55

SECTION 10. RATE ADJUSTMENT.

A. Operating Cost Adjustment. In addition to any other rate adjustments provided for herein, beginning on February 1, 2020 and at any time thereafter during the term of this Agreement, the Service Provider may petition the City for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations not otherwise the basis of any other rate adjustments herein. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment.

B. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding sales taxes and taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any

of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees.

C. Consumer Price Index

“Bureau” means the United States Department of Labor, Bureau of Labor Statistics, or any other agency succeeding to the Bureau’s function of computing the CPI.

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average as computed by the Bureau for a November.

“Base CPI” means the CPI computed by the Bureau for the month of November for the year preceding the year in which such adjustment will be made, beginning February 1, 2020. To illustrate, the CPI calculation that will become effective on February 1, 2020 will be the comparison of the CPI for November 2018 (Base Year) to November 2019. The Base Year shall move forward in succession such that the Base year for the 2021 adjustment shall be 2019, for the adjustment in 2022 shall be 2020 and similarly for successive years.

“Year in Question” means the 12-month period for which the price for Solid Waste collection and recycling service to be provided to the City is to be determined as provided in this subsection, and which shall run from February 1 through January 31.

The price for service specified in subsection B will remain in effect through January 31, 2020 unless modified by other provisions of this Section. This price will be adjusted on February 1, 2020, and annually thereafter, all in accordance with the procedures and formula set forth below. Each adjustment will be in an amount corresponding to the percentage difference between the Base CPI and the CPI computed by the Bureau for the month of November for the year, in which such adjustment will be made but no adjustment will ever exceed five percent (5%) for any Year in Question or reduce the price below the price at the start of the Agreement. The Service Provider will calculate the revised price for service annually and submit the calculation to the City for approval no later than January 15 of each year, beginning in 2020, and the adjustment will be made effective February 1 of each year beginning in the year 2020.

The price for service for each Year in Question shall be determined in accordance with the following formula:

$a - b = c$; and

$(1 + \frac{c}{a}) \times d = \text{adjusted price for service, where}$

a is the CPI computed by the Bureau for the month of November two years prior to the year in which such adjustment shall be made

b is the Base CPI

c is the index point change

d is the price for service that is subject to adjustment

If the CPI is has not been published for any period provided hereunder, the parties will negotiate in good faith to determine an alternative index.

D. Fuel Cost Adjustment

Beginning on February 1, 2020 and on the anniversary date each year of this Agreement thereafter, the Service Provider shall adjust all the rates herein in relation to the change, if any, in the average price of diesel fuel during the preceding contract year. The average price of diesel fuel will be determined by reference to the U.S. Energy Information Administration, Gulf Coast (PADD3); the website of which is: www.eia.gov/petroleum/gasdiesel.

Base Price of Diesel Fuel is the average annual price of the time frame from October 1, 2016 to September 30, 2017 derived from the U.S. Energy Information Administration website.

The fuel cost adjustment for any year shall be the product of (1) 6.60% and (2) a fraction of the numerator of which is equal to the difference between the Base Price and the Average Annual Price and the denominator of which is the Base Price. In the event the Average Annual Price is greater than the Base Price the Fuel Cost Adjustment shall be an upward adjustment to the rates. In the event that the Average Annual Price is lower than the Base Price the Fuel Cost Adjustment shall be a reduction to the rates; provided however, that any Fuel Cost Adjustment shall never cause the rates to fall below the rates prescribed at the beginning of this Agreement.

Formula:

$(\text{Average Annual Price} - \text{Base Price}) / \text{Base Price} \times 6.60\% = \text{Fuel Cost Adjustment}$

Example:

Assume the Average Annual Price of diesel fuel was \$2.50 for the preceding year.

$(2.50 - 2.30) / 2.30 = 0.087 \times 6.6\% = 0.0057 = 0.006 = 0.01 = 1.0\%$ increase to the rates for the ensuing year.

SECTION 11. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling, recycling or disposal of any Hazardous Waste, animal or human, dead animals, auto parts, used tires, concrete, dirt, gravel, rock or sand from any Container provided by the Service Provider located at any Residential Unit; provided, however, that the Service Provider and the owner or occupant of a Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of Construction and Demolition, Waste, auto parts, used tires, concrete, dirt, gravel, rock or sand by utilizing the Service Provider's

Roll-Off Services.

SECTION 12. TERM OF AGREEMENT & TRANSITION ASSISTANCE.

The term of this Agreement shall be for a period of five (5) years, commencing on February 1, 2018 and concluding on January 31, 2023. At the expiration of the term of this Agreement, the parties may mutually agree to extend this Agreement for one (1) additional period of three (3) years; provided, that neither party provides the other party with written notice of intent to terminate this Agreement at least 180 days prior to the expiration date of this Agreement. Beginning 180 days prior to the termination of this Agreement, the parties shall begin discussions regarding a mutually agreeable three (3) year extension period. At any time the parties may mutually enter in to negotiations to modify the Agreement and to extend it for any period of time that is mutually agreed upon.

Upon the expiration of this Agreement, the Service Provider shall act in good faith in providing assistance to the City and any subsequent contractor in transitioning the Solid Waste Services to the new contractor.

SECTION 13. ASSIGNMENT.

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the City; provided, however, that the Service Provider may assign this Agreement to any direct or indirect affiliate or subsidiary of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent.

SECTION 14. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances and revise existing ordinances to enable the Service Provider to provide the Services set forth herein. The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to replacing or repairing such Containers, require security deposits from the Residential Units utilizing such Containers. To the maximum extent allowed by applicable law, the City also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 15. PROCESSING, BILLING AND FEES.

A. Monthly Statement. Monthly, the City agrees to bill and collect the rates and fees charged under Section 9 hereto from all Residential Units possessing active water meters within the City's corporate limits, as well as from all other Residential Units requiring the collection, hauling, recycling and disposal of Municipal Solid Waste within the City's corporate limits, including the City's ETJ and/or expanded service areas or areas annexed by the City (the "Monthly Statement").

The City shall provide the Service Provider with revised Residential Unit counts by the tenth day of each month. The Service Provider will submit the Monthly Statement to the City on or before the fifteenth day of each month for all Solid Waste and recycling Services rendered for the immediately preceding month. Thereafter, the City will remit to the Service Provider an amount equal to such Monthly Statement within 30 days of receipt of the Monthly Statement. Along with each monthly remittance, the City shall provide the Service Provider with a report indicating the number and rate of Residential Units which have been billed for that month. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein.

B. Taxes. In addition to the amounts billed and collected by the City under Section 15.A., the City shall also be responsible for paying all sales, use and service taxes assessed or payable in connection with the Services.

C. Bad Debt; Unpaid Rates/Fees. The City agrees that payments owing to the Service Provider pursuant to this Agreement shall be based solely on the Services rendered by the Service Provider. The Service Provider shall not be held responsible for the collection of "bad debt" billed by and owed to City for the Services, nor shall the Service Provider be penalized for Services rendered that remain unpaid by any Residential Unit.

D. Billings for Roll-Off Services. Notwithstanding the above, the Service Provider will bill and collect all Residential, Commercial and Industrial Units for services performed with respect to Roll-Off Containers.

SECTION 16. SPILLAGE

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste or Recyclable Materials not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste or Recyclable Materials improperly placed outside of the Containers by any Residential Unit. The Service Provider may report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste or Recyclable Materials. Should excess Municipal Solid Waste or Recyclable Materials continue to be improperly placed outside of the Containers, the City shall require the Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9 hereof, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

SECTION 17. NON-COLLECTION NOTICE AND FOLLOW-UP

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Residential Unit fails to timely place a Container as directed in Section 4 hereof, or is otherwise in violation of the City's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste or Recyclable Materials to be removed, the Service

Provider may refrain from collecting all or a portion of such Municipal Solid Waste or Recyclable Materials and will notify the City within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Residential Unit's failure to timely place the Containers, Bulky Items or Bundles out for collection. Such written notice shall be attached to the Container or the uncollected Municipal Solid Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste or Recyclable Materials may be collected.

B. Notice from a Residential Unit. When the City is notified by an owner or occupant of a Residential Unit that Municipal Solid Waste or Recyclable Materials has not been removed from such Residential Unit and where no notice of non-collection or a change in collection schedule has been received by the City from the Service Provider, or the Service Provider has failed to collect Municipal Solid Waste or Recyclable Materials from the Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste or Recyclable Materials on the day a collection order is issued by the City; provided, however, that if the Service Provider fails to make such collection on the same day that a collection order is issued by the City, the Service Provider shall make such collection within twenty-four (24) hours of the next Business Day, and there shall be no charge to the Service Provider for any such original non-collection or late collection so long as the Service Provider makes such collection within such time. If Service Provider does not make the collection within such time, the Service Provider shall be charged a liquidated damages fee in the amount of one (1) month's rate for one (1) Residential Unit and such fee shall be deducted from the next payment due to the Service Provider.

SECTION 18. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such services on the immediately following business day. Upon delay in routes under this Section, designated radio stations and television stations and the City's webpage will be notified to announce the situation.

SECTION 19. CUSTOMER SERVICE.

The City agrees to field all inquiries and complaints from Residential Units relating to the collection, hauling, recycling and disposal of Municipal Solid Waste and Recyclable Materials. The Service Provider and the City agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints.

In order to assist the City in its obligations under this Section 19, the Service Provider agrees to provide City Hall with a primary contact and toll-free telephone number, email address and email correspondence, as well as Service Request Forms for customer service issues such as changes in service, container repair requests and missed collections.

A log of service questions, concerns, complaints, including the resulting resolution of each, shall be maintained and a copy provided to the City daily and will be summarized on a monthly report to the City.

The Service Provider will send a representative to City Council Meetings on a semi-annual basis or upon request of the City Manager.

SECTION 20. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling, recycling and disposal of Municipal Solid Waste and Recyclable Materials, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Service Provider to insure compliance with this Section 20.

SECTION 21. VEHICLES AND EQUIPMENT.

Vehicles used by the Service Provider for the collection, hauling, recycling and disposal of Municipal Solid Waste and Recyclable Materials shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste and Recyclable Materials onto the City's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized once per week, or as deemed necessary. The Service Provider will make every reasonable effort to use vehicles that do not leak oil, hydraulic fluid or other substances, or present an unhygienic or unsafe appearance. If there should be a leak from a truck, the Service Provider will make reasonable efforts to clean up the spill within seven (7) days of verifying that the Service Provider caused the spill. The City shall have the right to view any of the vehicle condition reports (for trucks used to provide the Services in the City) maintained by the Service Provider in compliance with the Texas Department of Transportation. The Service Provider reserves the right to contest that it was the cause of such spillage. If the Service Provider fails to exert reasonable efforts to clean up the spill within the seven (7) days of verification by the parties that the Service Provider's truck caused the spill, the City may impose a \$250/day fine for each day thereafter that the Service Provider has not made reasonable efforts to clean the spill. The City shall notify the Service Provider twenty-four (24) hours prior to imposing such a fine.

SECTION 22. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved. The City expresses that its streets and rights of ways are capable of withstanding the normal wear and tear of solid waste collection vehicles and will not hold the Service Provider responsible for any damage to the streets or rights of ways that may occur in the

normal provision of collection services.

SECTION 23. PERSONNEL AND PERFORMANCE STANDARDS.

The Service Provider shall not deny employment to any person based on race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

Performance goals shall be established to enhance sanitary and aesthetic living conditions for City residents; protect the environment; deliver consistent, reliable, convenient, safe services; provide for respectful, friendly, responsive communications with customers; and to show a commitment to the community.

Initial performance standards shall include:

- 1) Carts shall be replaced within five (5) feet of Residential Units' placement without obstructing traffic or damaging landscaping. Containers' lids will be closed after servicing.
- 2) Recycling Containers shall be placed upright within five (5) feet of the trash Roll Out.
- 3) Residential collection areas shall be free of litter and debris within a ten-foot (10) radius of the Containers. Service Provider is not required to clean up, collect or dispose of any loose or spilled litter and debris not caused by the Service Provider.
- 4) Service Provider shall make all reasonable efforts to collect Municipal Solid Waste and Recyclable Materials regardless of barriers (i.e. blocked streets) except when safety and health of the Service Provider's employees or the public is placed in danger. Service Provider will notify the City by the end of the day if service is not provided.
- 5) Service Provider will not provide collection service one-half (1/2) hour before or one (1) hour after dismissal on a school day on streets that are directly adjacent to the school campus.
- 6) During inclement weather, all operation supervisors begin street patrol to begin safety evaluations.
- 7) The Service Provider's Division Manager or Operations Manager will contact the designated City's representative to review the weather situation. It will be the decision of both the Division Manager or Operations Manager and the designated City representative whether to delay or cancel scheduled routes.

- 8) Upon delays in routes due to inclement weather designated radio stations and television stations and the City's webpage will be notified to announce the situation.
- 9) The Service Provider's Division Manager or Operations Manager is responsible for coordinating all make-up schedules with designated City representative.
- 10) Customer Service Center utilizes a closed loop process for the day's service. The Customer Service Center generates an electronic summary of any issues for the day, and how we responded, and resolved the issue for the day.

SECTION 24. INSURANCE COVERAGE.

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
1) Worker's Compensation	Statutory
2) Employer's Liability	\$1,000,000 each accident
3) Commercial General (Public) Liability	\$1,000,000 per occurrence \$2,000,000 in the aggregate
4) Automobile Property Damage Liability	\$1,000,000 combined single limit

To the extent permitted by law, any or all of the insurance coverage required by this Section 24 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. Upon the City's request, the Service Provider shall furnish the City with a certificate of insurance verifying the insurance coverage required by Section 24.

SECTION 25. INDEMNITY.

To the extent covered by applicable insurance, the Service Provider assumes all risks of loss or injury to property or persons caused by its performance of the Services. The Service Provider agrees to indemnify and hold harmless the City and its agents, directors, employees, officers and servants from and against all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorney's fees) caused by a willful or negligent act or omission of the Service Provider, its officers and employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees caused by a willful or negligent act or omission of the City, its agents, directors, employees, officers and servants.

SECTION 26. SAVINGS PROVISION.

If any term or provision of this Agreement shall be determined by a court of competent jurisdiction

to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 27. TERMINATION.

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void.

Section 28. Performance Bond

The Service Provider shall maintain a performance bond in the amount of \$3,000,000.00 (Three Million Dollars and no/100) payable to the City for guaranteeing the performance of the services set forth herein. The surety on the bond must be a duly authorized corporate surety company authorized to business in the State of Texas. Said bond shall be payable to the City if the Service Provider fails to cure any default of this Agreement and shall be the sole remedy available to the City for any default under this Agreement by the Service Provider.

SECTION 29. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

In the event that the City is declared a disaster area by the Governor of Texas, the City shall first be required to contact the Service Provider regarding its ability to provide cleanup services. To the extent that the Service Provider is unable to assist the City in its cleanup, the City may only then be allowed to enter into an agreement with another company to provide cleanup services in the City.

SECTION 30. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is

not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court and venue shall be in Travis County, Texas. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding to the addresses of the parties listed below, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

SECTION 31. ATTORNEYS' FEES.

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all its reasonable attorneys' fees and costs whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

SECTION 32. REPRESENTATIONS AND WARRANTIES BY SERVICE PROVIDER.

The Service Provider warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Service Provider has been duly authorized to act for and bind Service Provider.

SECTION 33. FRANCHISE TAX CERTIFICATION.

A corporate or limited liability company Service Provider certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

SECTION 34. PAYMENT OF DEBT OR DELINQUENCY TO THE CITY.

Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Service Provider agrees that any payments owing to Service Provider under the Agreement may be applied directly toward any debt or delinquency that Service Provider owes the City of Pflugerville, until such debt or delinquency is paid in full.

SECTION 35. TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION.

Service Provider certifies to the best of its knowledge that it is not delinquent in any court orders that it is obligated to pay on behalf of its officers of the corporation and therefore Service Provider is not ineligible to receive the award of or payments under the Agreement and acknowledges that

the Agreement may be terminated and payment may be withheld if this certification is inaccurate after being put on notice by the State of Texas and failing to pay.

SECTION 36. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF PFLUGERVILLE CITY COUNCIL AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS _____ DAY OF _____, 2017.

PROGRESSIVE WASTE SOLUTIONS OF TX, INC.
9904 FM 812
Austin, TX 78719

By: _____
Name: _____
Title: _____

CITY OF PFLUGERVILLE, TEXAS
P.O. Box 589
Pflugerville, TX 78691

By: _____
Name: _____
Title: City Manager

ATTEST:

By: _____
Name: _____
Title: City Secretary

ATTACHMENT A
TO THE EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING,
RECYCLING AND DISPOSAL OF MUNICIPAL SOLID WASTE AND RECYCLABLE
MATERIALS IN THE CITY OF PFLUGERVILLE, TEXAS, DATED FEBRUARY 1, 2018

**STANDARD GOVERNMENTAL CONTRACT AND PURCHASING RIDER
FOR CONTRACTS WITH THE CITY OF PFLUGERVILLE, TEXAS**
(Version October 17, 2016)

By entering into the Agreement referenced below, the contracting party identified below agrees that the below terms and conditions shall govern all agreements with the City unless otherwise agreed to by a specifically executed provision within the Agreement and if permissible by law. Absent a specifically executed provision, the below terms are BINDING and SUPERSEDE all other terms and/or conditions whether oral or written.

1. Application. This Governmental Rider applies to, is part of, and takes precedence over any conflicting provision in or attachment to the Agreement between the City of Pflugerville, Texas and Progressive Waste Solutions of TX, Inc. d/b/a WC of Texas. The Agreement involved in this Rider is described as follows:

Exclusive Franchise Agreement for the Collection, Hauling, Recycling and Disposal of Municipal Solid Waste and Recyclable Materials in the City of Pflugerville, Texas dated February 1, 2018

2. Payment Provisions. The City's payments under the **Agreement**, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.

3. Multiyear Contracts. If the City's city council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the Agreement becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Agreement automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution). It is understood and agreed the City shall have the right to terminate the agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to continue the Agreement, as determined by the City's budget for the fiscal year in question. The City may execute such termination by giving Service Provider a written notice of termination at the end of its then current fiscal year.

4. Abandonment or Default. In the event Service Provider abandons or defaults the work on the Agreement, fails to cure such default after opportunity to cure as provided herein, and causes the City to purchase the services elsewhere, Service Provider may be charged for any increased cost of goods, materials and/or services related thereto and shall not be considered disqualified in any re-advertisement of the service and may not be considered in future bids for the same type of work for a period of three years for the same scope of work, goods or services.

5. Disclosure of Litigation. Service Provider represents that, to its knowledge, there is no litigation pending or reasonably contemplated that would have any material impact on its ability to perform under this Agreement.

6. Compliance with other laws and certification of eligibility to contract. The execution of this Agreement by Service Provider shall be considered an executed certification that Service Provider will shall

comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, (as amended during the contracting period) and any orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including without limitation, immigration laws, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. ***Additionally, Service Provider's execution of this Agreement shall indicate that Service Provider has fully read and understood the terms and conditions for eligibility to contract with the City pursuant to Chapter 38 of the City's Ordinances and certifies they are following those local requirements.***

7. Compliance with all Codes, Permitting and Licensing Requirements. Service Provider shall comply with all national, state and local standards, codes and ordinances as well as any other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. The Service Provider shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations.

8. Liability and Indemnity of City. Any provision of the Agreement is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision. (Section 5, Article XI, Texas Constitution)

9. Indemnity and Independent Contractor Status of Service Provider. Service Provider shall indemnify, save harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, reasonable attorney's fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), to the extent it results from a willful or negligent act or omission of Service Provider, its officers, agents, and employees. It is understood and agreed that Service Provider and any employee or sub-contractor of Service Provider shall not be considered an employee of the City. Service Provider shall not be within protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. City specifically reserves the right to reject any and all Service Provider's employees, representatives or sub-contractors and/or their employees for any reasonable cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City, harassing, or is found to interfere with the effective and efficient operation of the City's workplace.

10. Liens. Service Provider agrees to and shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under the resulting agreement. At the City's request, the Service Provider or subcontractors shall provide a proper release of all liens, or satisfactory evidence of freedom from liens shall be delivered to the City.

11. Confidentiality. Any provision in the Agreement that attempts to prevent the City's disclosure of information that is subject to public disclosure under federal or Texas law or regulation, or court or administrative decision or ruling, is invalid. (Chapter 552, Texas Government Code)

12. Tax Exemption. The City is not liable to Vendor for any federal, state, or local taxes for which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any item. Texas limited sales tax exemption

certificates will be furnished upon request. Vendors shall not charge for said taxes. If billed, the City will remit payment less sales tax.

13. Contractual Limitations Period. Any provision of the Agreement that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

14. Sovereign Immunity. Any provision of the Agreement that seeks to waive the City's immunity from suit and/or immunity from liability is void unless agreed to by specific acknowledgement of the provision within the Agreement.

15. Governing Law and Venue. Texas law governs this Agreement and any lawsuit on this Agreement must be filed in a court that has jurisdiction in Travis County, Texas.

16. Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, the City may not accept or enter into a contract until it has received from Service Provider a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. Service Provider understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering the Agreement.

Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 may accompany the bid or may be submitted separately, but must be provided to the City prior to the award of the contract. Neither the City nor its consultants have the ability to verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising the Service Provider with respect to the proper completion of the TEC Form 1295.

CITY OF PFLUGERVILLE, TEXAS

SERVICE PROVIDER

By: _____

Authorized City Representative

Title: _____

Date: _____

Date: _____